

Remarks/Arguments

Claims 1-17 are pending in the application. Claims 1-13 are rejected. Claims 14-17 are withdrawn from consideration due to a restriction requirement. Claims 5, and 9-10 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claims 5 and 8 accordingly to remove the indefinite limitations and include the appropriate antecedent basis to overcome the rejection. Claims 1-4 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kobussen et al. (US Patent 6,245,369) in view of Sanderson et al. (US Patent 5,783,237) and Ricklefs et al. (US Patent 5,632,153). Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kobussen in view of Sanderson and Ricklefs, in further view of Erskine (US 3,444,078). Claims 6-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kobussen in view of Sanderson and Ricklefs, in further view of Keil et al. (US 3,073,702). Claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kobussen in view of Sanderson, Ricklefs, and Keil, in further view of Hignett et al. (US 4,536,313). Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kobussen in view of Sanderson, Ricklefs, and Keil, in further view of Barber et al. (US 2003/0183092). Claims 11-13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kobussen in view of Sanderson and Ricklefs, in further view of Riordan (US 4,094,237). The rejections will be addressed in turn below.

Independent claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kobussen in view of Sanderson and Ricklefs. Applicant cannot agree because

neither Kobussen, Sanderson nor Ricklefs, alone or in combination, discloses each and every element of independent claim 1. Claim 1 requires, in part, the step of "reconditioning the collected aqueous salt solution such that it comprises forced evaporation of water out of the aqueous salt solution and reusing the reconditioned aqueous salt solution when supplying the aqueous solution to the exterior of the co-extruded food products." Neither Kobussen, Sanderson nor Ricklefs, alone or in combination, discloses this step. As recognized by the Office Action, Kobussen is silent to the step of reconditioning collected brine such that it comprises forced evaporation of water out of the collected brine by heating the brine prior to recirculating the brine through the system; instead of disclosing that reconditioning an aqueous salt solution collected when supplying the aqueous salt solution to the exterior of a co-extruded food product by forced evaporation of water.

However, Sanderson is unable to cure Kobussen to meet the limitations of claim 1, because Sanderson also fails to disclose this step. In contrast, Sanderson discloses a process wherein a saturated salt solution is lightly sprayed onto cheese curds wherein the addition of the fully saturated salt solution to the curd causes a syneresis of the curd to produce a voluminous permeate of salty whey, wherein water is optionally added to the salty whey solution before the whey is filtered by a nanofiltration unit to leave a salty solution (wherein the nanofiltration unit acts to desalinate the salty whey, col. 2, lines 64 - 67), introduced into an evaporator to increase salt concentration, and cooled, before additional salt is added to produce a saturated salt solution, and heated once again (See Sanderson, Fig. 1; Col. 1, line 37 - col. 4, line 9), and Sanderson fails to disclose an aqueous salt

solution which is collected, reconditioned by forced evaporation and reused as required by claim 1, but instead discloses a large volume of salty whey being desalinated and filtered, introduced into an evaporator, and then re-salinated to create a saturated salt solution.

Furthermore, Ricklefs is unable to provide the additional disclosure absent from Kobussen and Sanderson to meet the limitations of claim 1. Instead, Ricklefs discloses that the filtration unit is separating suspended solids "without affecting the salinity of the brine" (column 2, line 20; column 2, lines 39-40), and Ricklefs contains no disclosure of reconditioning the brine by forced evaporation as required by Applicant's claim 1. Therefore, because neither Kobussen, Sanderson nor Ricklefs, alone or in combination, discloses the step of reconditioning an aqueous salt solution collected when supplying the aqueous salt solution to the exterior of a co-extruded food product by forced evaporation of water out of the aqueous salt solution and reusing the reconditioned aqueous salt solution, Applicant requests that the rejection be withdrawn.

In addition, the combination of the asserted references would not be obvious without using the Appellant's specification as a blueprint. Even if every limitation were taught by the prior art references, Applicant asserts there is no reason or motivation to combine the asserted references. The only way based on the teachings of the prior art, to arrive at the claimed invention, is to use the claim as a frame, taking individual, naked parts of separate prior art references where employed as a mosaic to recreate a facsimile of the claimed invention. W.L. Gore & Associates v. Garlock, Inc., 721 F.2d, 1540, 1552 (Fed. Cir. 1983). The mere fact that references can be combined or modified does not render

the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art. KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385, 1396 (2007). An obviousness analysis begins in the text of section 103 with the phrase "at the time the invention was made." For it is this phrase that guards against entry into the "tempting but forbidden zone of hindsight when analyzing the patentability of claims pursuant to that section. See Loctite Corp. v. Ultraseal Ltd., 781 F.2d 861, 873, 228 USPQ 90, 98 (Fed. Cir. 1985), overruled on other grounds by Nobelpharma AB v. Implant Innovations, Inc., 141 F.3d 1059, 46 USPQ 2d 1097 (Fed. Cir. 1998). Measuring a claimed invention against the standard established requires the often difficult but critical step of casting the mind back to the time of the invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and then-accepted wisdom in the field. See, e.g. W.L. Gore & Assoc., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 313 (Fed. Cir. 1983).

The best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. See, e.g., C.R. Bard, Inc. v. M3 Sys., Inc., 157 F.3d 1340, 1352, 48 USPQ 2d 1225, 1232 (Fed. Cir. 1998) (describing "teaching or suggestion or motivation [to combine] as an essential evidentiary component of an obviousness holding") (But see KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007) (warning that rigid preventative rules in regard to teaching, suggestion and motivation to combine that deny the use of common sense are not consistent with Supreme Court precedent)). Still, "the invention must be viewed not with

the blueprint drawn by the inventor, but in the state of the art that existed at the time." See, e.g. Interconnect Planning Corp. v Feil, 774 F.2d 1132, 1138, 277 USPQ 543, 547 (Fed. Cir. 1985)

Evidence of a suggestion, teaching or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem solved, although the suggestion more often comes from the teachings of the pertinent references. Rouffet, 149 F.3d at 1355. The range of sources available does not diminish the requirement for actual evidence. That showing must be clear and particular. See, e.g., C.R. Bard, 157 F.3d at 1352.

The teaching of the cited references fails to provide any reason or motivation for one skilled in the art to combine the references to attempt to arrive at Applicant's claimed invention, because not only are the cited references directed to different processes for overcoming different problems, the references fail to overcome the problem Applicant's claimed invention seeks to solve. Regarding the Kobussen reference, as provided above, there is no disclosure in Kobussen on reconditioning the collected brine prior to recirculating the brine through the system let alone the specific method of reconditioning as indicated in claim 1. Furthermore, although Applicant's claims and the disclosure of Kobussen are both generally directed to treating co-extruded food products, there are various ways of reconditioning that differ from the limitations of the process claimed in the pending claim 1, e.g., adding salt to the recirculated brine and processes wherein brine is caused to adhere to the meat product (see Ricklefs resulting in a diminishing of the brine volume thus requiring the addition of brine while recirculating.

Therefore, although there exist means of treating food products which generally dehydrate the casing of food products, addressing the Office Action's remarks regarding inherency, Kobussen's teaching that water migrates out of sausage casings is irrelevant in the light of all other variables relating the brine processing; and thus only with hindsight can the conclusion be drawn that the best option out of many would be the forced evaporation of water out of the recirculated brine.

Furthermore, unlike both Kobussen and the present invention, Sanderson requires a fully saturated salt solution due to the typical salt solution conditions required for the processing of cheese curd that results in a voluminous permeate or salty whey. The problem in cheese manufacturing is how to handle the enormous volume multiplication from the fully saturated salt solution to a salty whey; notably, evaporation as such is not the solution as Sanderson also requires the addition of salt. Sanderson's problem (the recycling of a large volume of liquid that is expanded in volume several times to transform the large volume of liquid into a limited volume of fully saturated salt solution) is not to be compared to the problem of reconditioning an aqueous salt solution that results from dehydrating the casing of coextruded food products. Sanderson also discloses the addition of water to the whey (column 2, line 46, column 2, line 65-67, column 3, line 49, claims 6 and 7) as well as nanofiltration or osmosis (e.g. column 3, line 45), contrary to the present invention wherein no salt is added in the present invention after evaporation.

As argued before in view of the applicant there is no incentive to combine Kobussen with the Sanderson disclosure. Both relate different types of food processing requiring

different process conditions and a different demand in process control. And even if so it is not clear why those skilled in the art faced with Kobussen would selectively only to take the evaporation step of Sanderson and not other steps like e.g. the injection of water. Notwithstanding the above, even the selective combination of features of Kobussen and Sanderson is insufficient to meet the limitations of claim 1 as the combination lacks disclosure of collecting and reconditioning the brine with forced evaporation and reusing the reconditioned brine.

Finally, Rickfels disclosure is also directed to a different process utilizing methods unlike those of Kobussen, Sanderson, and the Applicant. Unlike any of the foregoing references, Ricklefs (US 5,632,153) discloses cleaning brine by removing contaminants (column 1, line 59) in a food chilling recirculating system. As provided above, Ricklefs is clear in that there is no forced evaporation of water out of the brine. Ricklefs explicitly states that the filtration unit is separating suspended solids "without affecting the salinity of the brine" (column 2, line 20; column 2, lines 39-40). In case it is desired to maintain a desired salinity of the brine Ricklefs suggests to "add salt or brine of a different salinity" as well as that "salt is added if there is an addition of water to the brine." (column 4, lines 23 - 25). Another aspect of the chilling of food products with the brine is that the volume of the brine in the system will diminish by "adhesion of the brine to the meat product" (column 5, lines 33 - 35). Thus the Ricklefs reference is non-analogous and cannot support a rationale to combine with Sanderson as Sanderson is (among others) disclosing the evaporation of water.

Therefore, the combination of Kobussen, Sanderson, and Ricklefs would not be made by one of ordinary skill in the art because the references are directed to different processes which are applied to different food products under different conditions and are unable to combine to solve Applicant's problem, particularly where, as here, the different disclosures lead away from each other and do not properly combine to form a functional process if an attempt is made to combine a piecewise selection of the elements required by Applicant's pending claim 1 and those features alone will not be made by the skilled person. Thus, one of ordinary skill in the art would have no motivation to combine the references without the use of hindsight, using Applicant's claim as a frame, taking individual, naked parts of the separate prior art references where employed as a mosaic to recreate a facsimile of the claimed invention. Based upon the foregoing, because the cited reference, alone or in combination, fail to directly disclose or suggest each and every feature of Applicant's claim 1, Applicant respectfully requests that the rejection be withdrawn. Furthermore, claims 2 - 13 depend upon the limitations of independent claim 1, either directly or indirectly, and Applicant requests that the rejections of those claims be withdrawn at the very least due to their dependence upon an allowable base claim.

CONCLUSION

In view of the foregoing remarks, Applicant submits that claims 1 - 13 are in condition for allowance, and courteously solicits the same.

If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to telephone the undersigned at 515/558-0200.

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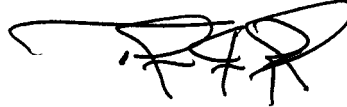
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All fees or extensions of time believed to be due in connection with this response are attached hereto; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,



Timothy J. Zarley
Reg. No. 45,253
ZARLEY LAW FIRM, P.L.C
Capital Square
400 Locust Street, Suite 200
Des Moines, IA 50309-2350
Phone No. (515) 558-0200
Fax No. (515) 558-7790
Customer No. 34082
Attorneys of Record

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